

1 supplemented.

2 Q The composition of the partnership changed again,
3 did it not, in December of 1985, do you recall that?

4 A I don't recall it specifically.

5 Q Let me refer you, then, to the gray volume,
6 Shurberg 8. Number eight.

7 A December 30, 1985?

8 Q That's correct. It's a letter from Mr. Bacon to
9 Mr. Ramirez, transmitting to him a document which reflects,
10 I believe, the resignation of Mr. O'Brien from the
11 partnership, do you see that?

12 A Yes, sir.

13 Q Am I correct that Mr. O'Brien, who had arrived in
14 the partnership according to the materials we've just seen,
15 in September of '85, was leaving in December of '85?

16 A I haven't studied the document, but if the
17 documents reflect that, then I'm sure that's accurate.

18 Q Mr. O'Brien was not a minority, was he?

19 A I don't think so. I don't have a recollection of
20 Don O'Brien. I don't know.

21 Q Were there any other aspects of the Astroline
22 partnership agreement which changed in December, 1985, to
23 the best of your recollection?

24 A I don't have -- you know, I'm not able to really
25 answer that, sorry.

1 Q Well, let me refer you to, in the red volume,
2 Shurberg 44 and 45. And, these appear to be the same letter
3 substantively, but slightly reformatted in one version to
4 the next, and the Shurberg 45 has handwriting on it. I'm
5 not going to ask you to comment on the handwriting at this
6 time, but just to review the text of this document,
7 whichever one is easier for you to read. And, I'm
8 particularly interested in the paragraph which is number 44
9 on page two, paragraph (2).

10 A Your question is?

11 Q Do you recall seeing this before, in approximately
12 December of 1985, December 31, 1985?

13 A I don't have a contemporary, current recollection
14 of having received this telex, but I, you know, I probably
15 did. It was 13 years ago, but I don't -- you know, I don't
16 currently recall having received this document before. But,
17 I probably did. Was it sent to me? Mary Morton, I don't
18 know. It wasn't even sent to me. I may have gotten a copy
19 of it. I honestly can't remember having received this.
20 This apparently went to someone else. I may have gotten a
21 copy of it.

22 I am familiar with some of the things that they're
23 discussing in the document.

24 Q What are you familiar with?

25 A I'm familiar with the infusion of additional

1 investment from some of the limited partners, I guess,
2 additional contributions by the limited partners to the
3 enterprise. I know that was going on at the time, and I'm
4 also generally aware of the capital contributions that were
5 changing by the limited partners at that time. There was
6 more money being invested in the station at that time and
7 that was an ongoing thing.

8 Q Now, paragraph two of this document refers to
9 prior understandings and agreements under the general and
10 limited partners that the Astroline partnership agreement
11 would be amended as soon as possible. Do you recall
12 participating in any discussions concerning any such
13 agreements to amend the partnership agreement?

14 A No.

15 Q You were a general partner at that point, were you
16 not?

17 A I was apparently a general partner. Again, I
18 don't think I ever actually paid for my general partnership
19 interest, but I was -- I had represented to the Commission
20 that I was a general partner at that time.

21 Q And, you signed the documents that said you were a
22 general partner, hadn't you?

23 A I had signed the documents that said I was a
24 general partner, as well. I never got a certificate or any
25 other documentation of my partnership interest and I

1 actually never paid for my interest, so it is still a bit
2 unclear in my own mind whether I was a general partner at
3 that time or not. But, I did execute the documents that
4 reflected my 1 percent interest.

5 Q And, you have no reason to believe that anyone
6 else in the Astroline partnership doubted that you were a
7 general partner at that point, do you?

8 A I don't know what their state of mind was at that
9 time.

10 Q They sent you documents for your signature as
11 general partner, did they not?

12 MR. TOPEL: Objection. Who is they?

13 MS. SCHMELTZER: Are you talking about everyone in
14 the partnership?

15 JUDGE FRYSIK: Could you rephrase the question?

16 BY MR. COLE:

17 Q You were sent documents on behalf of the
18 partnership for your signature as general partner, were you
19 not?

20 A Yes.

21 Q Turn if you would, please, to Shurberg 46 in the
22 red volume, please, and this is a memorandum from Mr. Lance
23 to you and Mr. Ramirez which, on its face, appears to have
24 transmitted to you gentlemen a draft of the amended
25 partnership agreement, is that correct?

1 A Yes, sir.

2 Q This is also consistent with the division of
3 responsibilities we've discussed before, that is, that
4 Peabody & Brown, Mr. Lance and Mr. Bacon, would be
5 responsible for the preparation of business-related
6 documents and then pass them around or circulate them for
7 review, am I correct about that?

8 A That's generally the case, yes, sir. This is an
9 example of that.

10 Q Now, this refers in the second paragraph to an
11 agreement among all the partners regarding this matter
12 reached during the first part of 1985. Do you know what
13 that was, or that reference was?

14 A What --

15 Q In the second paragraph of Shurberg 46, Mr. Lance,
16 in the last line and a half, refers to an agreement among
17 all the partners regarding this matter reached during the
18 first part of 1985. Do you recall what that agreement was?

19 A No, I don't.

20 Q Do you recall when that agreement was reached,
21 other than sometime in the first part of 1985?

22 A No, I don't even remember what exactly they're
23 referring to there, what agreement they're talking about. I
24 don't recall.

25 Q But, ultimately, am I correct that the amended

1 Astroline partnership agreement was ultimately signed by you
2 and all other Astroline partners within approximately a
3 month to a month and a half after Mr. Lance's memorandum to
4 you, would you agree with that?

5 A Yes.

6 MR. COLE: Excuse me for just a moment, Your
7 Honor.

8 (Pause.)

9 JUDGE FRYSIAK: I'm looking for a little break
10 time, so --

11 MR. COLE: Oh, this would be a great time to
12 break, that would be fine.

13 JUDGE FRYSIAK: Do you want to take five minutes?

14 MR. COLE: Thank you.

15 (Whereupon, a short recess was taken.)

16 JUDGE FRYSIAK: We're now on the record.

17 MR. COLE: Thank you, Your Honor.

18 BY MR. COLE:

19 Q Mr. Hart, picking up where we left off, in
20 addition to filing ownership reports in such matters, am I
21 correct that Baker & Hostetler also provided what we would
22 refer to as day to day representation of Astroline before
23 the FCC?

24 A Yes.

25 Q Let me refer you to Shurberg Exhibit 117 and 118.

1 I'd ask you to take a look at those. 117 is a letter
2 addressed to you from Mr. Sostek, dated February 15, '86 and
3 118 is a letter from you to Mr. Sostek dated February 19,
4 1986.

5 A 117 and --

6 Q 117 and 118, yes. The letter from Mr. Sostek is
7 117 and the letter to Mr. Sostek is 118. Mr. Sostek's
8 letter refers to the expiration of a special temporary
9 authority, which was apparently held by WHCT and he inquires
10 about that and you provide an explanation in the February 19
11 letter, which is Shurberg 118. Is that a correct assessment
12 of these two letters?

13 A The letters speak for themselves. I don't think I
14 can characterize them any better than they speak the
15 language contained in the letters.

16 Q On 118, that's not your signature on the second
17 page, is it?

18 A No, it is not.

19 Q Is that one of the authorized signatories on your
20 behalf?

21 A Yeah, the letter was authorized. My signature was
22 authorized, but I actually didn't sign it myself.

23 Q I understand. Am I correct that maintenance of
24 special temporary authorities and the like fell within the
25 scope of Baker & Hostetler's responsibilities relative to

1 Astroline's interest before the FCC?

2 A Yes.

3 Q And, one last question about Shurberg 118. Was it
4 a truthful statement that you made to Mr. Sostek when you
5 assured him that WHCT-TV is and always has been my most
6 important client?

7 A Astroline --

8 Q In the very first sentence of the letter on
9 Shurberg 118, your letter dated February 19. Your first
10 sentence reads, "Pursuant to your correspondence dated
11 February 15, 1986, I want to assure you that WHCT-TV is (and
12 always has been) my most important client." Was that a true
13 statement?

14 A At that time, that was a true statement, yes.

15 Q Did that stop being a true statement at some
16 point?

17 A In the course of my career, I developed a number
18 of important client relations. I try not to elevate one
19 client over another, Mr. Cole. I would say that a number of
20 my clients are my most important.

21 (Laughter.)

22 Q Well, that was diplomatically stated. Fine, I
23 will accept that answer and move on.

24 MR. COLE: Your Honor, on 117 and 118, the Sostek-
25 Hart exchange of correspondence we just examined Mr. Hart

1 about, I had not previously offered that. I'd like to offer
2 that now.

3 MR. TOPEL: No objection.

4 JUDGE FRYSIK: It's received.

5 (The documents referred to
6 were marked for identification
7 as Shurberg Exhibits 117 and
8 118 and were received in
9 evidence.)

10 MR. COLE: Thank you, Your Honor.

11 BY MR. COLE:

12 Q Mr. Hart, this will be a real quick one, still in
13 the white album, Shurberg 107. There is a letter to you
14 from a corporate paralegal at Peabody & Brown named Barbara
15 Fulleron transmitting to you something. Do you see that, do
16 you see where we are?

17 A Yes, sir.

18 Q I'm primarily interested in the handwritten
19 notation, "Barbara, thank you," and then initials. Is that
20 your handwriting?

21 A Yes, sir.

22 Q Mr. Hart, were you aware that in 1985, the FCC
23 revised its treatment of limited partnerships for certain
24 purposes?

25 A Yes.

1 Q When did you first become aware of that?

2 A Sometime in 1984 or '85.

3 Q What was your understanding of the Commission's
4 change in policy?

5 A There were a couple of different changes. I think
6 possibly the one that you're referring to relates to certain
7 provisions and procedures that the FCC recommended to
8 insulate the limited partners from an active, day to day
9 role in the affairs of the station or the organization.

10 Q You became aware of those changes in, you said,
11 1984 and 1985, is that correct?

12 A At or about the time the FCC made the changes, I
13 was aware, I became aware of them shortly after the FCC made
14 the changes, from a series of cases, I think, that
15 precipitated some of those changes.

16 Q Now, do you recall what any of those cases were
17 that you're referring to?

18 A There were a series of, a series of decisions by
19 the FCC. I can't really remember their names. But, as you
20 know, Mr. Cole, and others here, I was involved in
21 practicing before the Commission at that time, handling
22 various comparative hearings. And, I was aware of the trend
23 of cases that were being decided at that time.

24 Q Now, in April of 1987, you relinquished your
25 partnership interest in Astroline, isn't that correct?

1 A That is correct, about a year and a half after it
2 was contemplated that I would be a general partner.

3 Q Well, it was about a year and a half after you
4 became a general partner, isn't that correct?

5 MR. TOPEL: Objection, Your Honor, I think the
6 witness has explained two or three times his understanding
7 of not having paid for and having signed the documents, but
8 not having paid for it and being confused. I object on the
9 grounds of repetition.

10 JUDGE FRYSIK: Objection is overruled.

11 BY MR. COLE:

12 Q And, just for point of reference, let me refer you
13 to Shurberg 55 and 56 in the red volume. Actually, let me
14 strike that, 56 alone, because that appears to be signed by
15 you.

16 A Yes, this was the document under which I canceled
17 my outstanding obligation to pay, which confirms that I
18 hadn't made the payment at that time. And, in effect,
19 retired or reassigned or transferred my 1 percent interest
20 back to the partnership.

21 Q Now, in May of 1987, Mr. Hart, Mr. Ramirez wrote
22 to you, did he not, and asked you about the preparation of
23 an annual ownership report, which was due on August 3, 1987
24 and to refresh your recollection or at least tell you what
25 I'm talking about, I refer you to Shurberg Exhibit 75 in the

1 white album.

2 A Yes, sir.

3 Q Is that your handwritten notation at the bottom,
4 which reads, "Dale, are we ready to begin the annual
5 ownership report for WHCT-TV?"

6 A That is correct.

7 Q Those are your initials, THE, at the bottom?

8 A Yes.

9 Q Who is Dale?

10 A Dale was an associate at the firm of Baker &
11 Hostetler and part of the telecommunications team that we
12 discussed earlier.

13 Q That's Dale Harburg, is that correct?

14 A That's Dale Harburg, yes.

15 Q Do you know how Mr. Ramirez knew that there was an
16 ownership report due on August 3, 1987?

17 A I believe he came across that information either
18 from FCC notices or FCC releases or possibly in consultation
19 with me earlier than that. But, I'm -- he, he obviously
20 found out about it and it was no secret.

21 Q Well, actually, let me refer you to Shurberg
22 Exhibit 74, immediately before that document in the red
23 volume, which is a memorandum to all Baker & Hostetler
24 broadcast clients from Mr. Whitley.

25 A Right, this is the FCC release, the public notice

1 of this referring to, you had referred me to a document,
2 Shurberg Exhibit 74, that is a memo from Jack Whitley. This
3 may have been the way Mr. Ramirez heard about it. He may
4 have heard about it independent of this, but it was standard
5 procedure for Baker & Hostetler to inform its clients by a
6 memo like this and Mr. Whitley was the person involved in
7 preparing such a memo and keeping track of the dates and
8 things like that on behalf of the firm and its client.

9 MR. COLE: Your Honor, I'd like to start a new
10 line of questioning that I'd rather not interrupt in the
11 middle and it's probably going to take us at least an hour
12 plus to get through, and I was wondering if you want to
13 break now, come back after the lunch hour and finish up with
14 Mr. Hart, do cross-examination and wrap things up.

15 JUDGE FRYSIK: Good idea. Let's take a lunch
16 break and be back at ten to one.

17 (Whereupon, at 11:50 a.m., the hearing was
18 recessed, to reconvene at 12:50 p.m. this same day, Tuesday,
19 September 29, 1998.)

20 //

21 //

22 //

23 //

24 //

25 //

1 Q What did you do in response to that letter, if
2 anything?

3 A Is that the letter?

4 Q Shurberg 75 is the --

5 A I should have it in the white folder?

6 Q Yes.

7 A I forwarded the letter in my note at the bottom of
8 the letter to Dale Harburg.

9 Q You expected her, based on that note, to begin
10 preparation of the ownership report?

11 A Yes.

12 Q Please look at Shurberg 76, 77, 78, 79 and 80, all
13 of which are in the white book. Why don't you take them one
14 at a time, 76, which is a letter from you to Mr. Boling. Is
15 that your signature?

16 A Yes.

17 Q And, is it accurate to say this is a letter that
18 you sent out to Mr. Boling, transmitting a questionnaire
19 concerning certain information which was necessary for the
20 ownership report?

21 A Yes.

22 Q Now, let's go over to 77. Is it correct that this
23 is a similar, if not identical, letter to Mr. Ramirez,
24 giving you the essentially the same information?

25 A Correct.

1 Q And, 78, am I correct that that is essentially
2 similar if not identical letter to Mr. Lance, seeking
3 similar, if not identical, information from Mr. Lance for
4 the ownership report, is that correct?

5 A Yes, Mr. Lance, of course, is not a principal or
6 an owner. Obviously sending it to him was to keep him
7 informed.

8 Q Mr. Lance was an officer of WHCT Management, Inc.,
9 was he not?

10 A Yes, he was.

11 Q Moving along, please, Mr. Hart, to Shurberg 79,
12 and again, is this a letter from you to Mr. Sostek, seeking
13 essentially the same information in connection with
14 preparation of the ownership report as we've seen in the
15 previous three exhibits?

16 A Correct.

17 Q And, finally, Shurberg 80, is that not a letter
18 from you to Mr. Kerchick, again seeking essentially the same
19 information for use in preparation of the ownership report?

20 A Yes, Mr. Kerchick served in a counsel position on
21 behalf of the Estate of Joel Gibbs.

22 Q Am I correct that Joel Gibbs was a principal of
23 WHCT Management, Inc.?

24 A Yes, that's correct.

25 Q Now, each of these letters, and feel free to

1 review them to satisfy yourself, but each of these letters
2 indicates that the completed questionnaire should be
3 returned to Dale Harburg, and that's in the next to the last
4 sentence of each of the letters. And, that's the Ms.
5 Harburg to whom you referred Mr. Ramirez' letter of early
6 May, '87, isn't that correct?

7 A That's correct.

8 Q Do you know whether Ms. Harburg prepared an
9 ownership report for Astroline to be filed on or about
10 August 3, 1987?

11 A She compiled information that would be contained
12 in an ownership report. The actual document that we filed
13 was a disclosure letter that contained a lot of the same
14 information that would be included in an ownership report.

15 Q Excuse me, Mr. Hart. Could you please also turn
16 to Shurberg 81, which is a one-page memorandum to broadcast
17 clients from Baker & Hostetler, concerning issues/programs
18 listed and ownership reports dated July 7, '87, do you see
19 that?

20 A Yes.

21 Q Do you see the handwritten notation at the bottom?

22 A Yes.

23 Q Do you know who Mindy Vazquez is?

24 A I remember the name and I remember that she was a
25 staff person at the television station, WHCT, and was

1 basically Rich Ramirez' assistant.

2 Q Did you speak with Ms. Vazquez about preparation
3 of an ownership report in mid-1987?

4 A No, I believe she spoke to Dale Harburg.

5 MR. COLE: Your Honor, I had not previously
6 offered Exhibits 76, 77, 78, 79 and 80, which are the
7 letters from Mr. Hart to Mr. Boling, Ramirez, Lance, Sostek
8 and Kirchek, which I've just discussed with Mr. Hart. I
9 think at this point, based on my examination, I would like
10 to offer Shurberg 76, 77, 78, 79 and 80.

11 JUDGE FRYSIK: Received.

12 (The documents referred to,
13 having been previously marked
14 for identification as Shurberg
15 Exhibits 76, 77, 78, 79 and
16 80, were received in
17 evidence.)

18 JUDGE FRYSIK: Did you offer 81?

19 MR. COLE: Not yet. I'll offer it now. I've just
20 examined Mr. Hart about it and based on my examination, I'd
21 like to offer that.

22 MR. TOPEL: No objection.

23 JUDGE FRYSIK: Received.

24 //

25 //

1 (The document referred to was
2 marked for identification as
3 Shurberg Exhibit 81, and was
4 received in evidence.)

5 MR. COLE: Thank you, Your Honor.

6 BY MR. COLE:

7 Q Now, Mr. Hart, returning to Shurberg 82 --

8 A Let me just note, if you don't mind, Mr. Cole,
9 Mindy Vazquez was a Hispanic and she worked for the station.

10 Q Thank you. Could you please turn to Shurberg 82?

11 A Yes.

12 Q This is, is it not, an ownership report form,
13 which appears to have been completed, at least in part, on
14 behalf of Astroline Communications Company Limited Partners,
15 is that correct?

16 A It's a draft of a form.

17 Q It's a draft of a form. Now, it's been signed by
18 Mr. Ramirez as of July 20, 1987, isn't that correct?

19 A There's, I think that's his signature. I'm not
20 sure.

21 Q The record will speak for itself. I believe Mr.
22 Ramirez testified that it was his signature, but I won't ask
23 you to verify that. Do you know whose handwriting it is in
24 the upper left hand corner or in the lower right hand
25 corner?

1 A I just know that it's not my handwriting.

2 Q Do you know how this ownership report came to be
3 prepared, this draft ownership report, excuse me, this draft
4 ownership report, came to be prepared?

5 A This particular draft, no, I don't. I believe it
6 was -- no, I don't know specifically how it was prepared.
7 It is a draft.

8 Q Do you recall speaking with Ms. Harburg about the
9 preparation of Astroline's ownership report during July of
10 1987?

11 A I believe we talked about it. She probably kept
12 me generally informed that the process was moving forward.

13 Q Do you recall that she ever raised any questions
14 with you concerning the information that should be presented
15 in that report?

16 A I don't recall any specific conversations on the
17 specific questions that she had.

18 Q Do you recall speaking with David Dudley at any
19 point in July of 1987 concerning the Astroline ownership
20 report?

21 A No.

22 Q Let me refer you, Mr. Hart, to Shurberg Exhibit
23 83, which is a fold-out, because this is long paper, and
24 particularly to page two of that, which is a handwritten
25 memorandum addressed to Dale, do you see that? I believe

1 the first two sentences read, "Attached is the ownership
2 report for Astroline. Tom handed me the form earlier this
3 week and indicated that the equity/voting ratios for
4 Astroline Limited Partnership were incorrect, do you see
5 that?

6 A Mm-hmm.

7 Q Do you recall handing a draft ownership report to
8 Mr. Dudley sometime in or around July 24, 1987?

9 A No, I honestly don't. He was -- he was at the
10 firm and I vaguely remember him being involved in some of
11 the matters involving Astroline. But, Dale Harburg and Jack
12 Whitley really played a more significant role in my
13 recollection in the preparation of the ownership report.

14 Q Now, moving along to Shurberg 84, if you would,
15 please, and this, again, is a draft ownership report -- I'm
16 sorry, a partial draft ownership report with some
17 information which has now been typed in, which in the
18 earlier version had only been handwritten in. Do you
19 recognize this at all?

20 A I recognize it as a draft FCC ownership report.
21 I've seen it in conjunction with this particular case. I
22 don't have any specific familiarity with the document.

23 The handwriting on the back of the page is not my
24 handwriting.

25 Q Okay, moving along to Shurberg 85, which is a

1 letter from Mr. Bacon to Dale Harburg in care of you, dated
2 July 28, 1987.

3 A Yes.

4 Q Do you know why Mr. Bacon would have sent Ms.
5 Harburg documents in care of you?

6 A No, I really don't. He knew me, I think, better
7 than he knew Ms. Harburg. He had more contact with me. He
8 may have just sent it to me in care of her, so that it would
9 come through me, but I have no real reason, I have no real
10 explanation why he sent it to me in care of her.

11 Q And, as I read --

12 A Or, just the opposite, sent it to her in care of
13 me.

14 Q Okay. As I read Mr. Bacon's letter, among the
15 items he was sending to you was the amended and restated
16 limited partnership agreement, correct?

17 A That's correct.

18 Q Item number one, is that correct?

19 A Yes.

20 Q Why would Mr. Bacon be sending that to you or Ms.
21 Harburg in July of 1987?

22 A I don't know. You'd have to ask Mr. Bacon.

23 Q Well, to the best of your knowledge, did Baker &
24 Hostetler have a copy of that agreement in its files in
25 Washington?

1 A This is a document that you and I spoke of earlier
2 this morning, right?

3 Q This is the Astroline Communications Company
4 Amended and Restated Limited Partnership Agreement and First
5 Amendment, which I believe you can find at Exhibit 9 in the
6 gray folder.

7 A We spoke about that this morning, correct?

8 Q I'm not sure we spoke about this one.

9 A Oh, wait a minute, then.

10 Q This is the partnership agreement which was
11 entered into and made effective as of December 31, 1985.

12 A Oh, okay. I'm not sure that we had a copy of this
13 one or not. I just don't recall. This was one -- okay,
14 yeah, I mean, similar to the others that Carter Bacon took,
15 and the firm up in Boston took the lead in drafting, but --

16 Q If you have the gray folder or the gray volume in
17 front of you?

18 A I'm looking at it.

19 Q Look at Exhibit 9, page 37?

20 A Yes.

21 Q Which is the signature page.

22 A Mm-hmm.

23 Q That's your signature on it, isn't it?

24 A That is my signature, yes.

25 Q And, is it your testimony that you did not have a

1 copy of this document which you signed in your own file?

2 A My testimony is that I just don't recall whether I
3 had a copy of it in my files or not. I honestly had seen
4 the document before, because it does bear my signature on
5 page 36. I just don't know, at that particular time, when
6 Carter Bacon sent a copy down to Dale, whether I had a copy
7 or whether a copy was at the firm or not. Maybe not,
8 because that might explain why he's sending it down now, but
9 I don't know.

10 Q Just for point of correction, Mr. Hart, you
11 indicated that your signature appeared on page 36 of the
12 limited partnership agreement which appears as Shurberg
13 Exhibit 9, and I think it's page 37. I just want to make
14 sure the record is clear, so we're not all looking for a
15 signature page on 36.

16 A Yes, you're right, my signature appears on page
17 37. But, to answer your question, no, I do not know why Mr.
18 Bacon sent that document down to Ms. Harburg on July 28 of
19 '87.

20 Q Now, move along, please, Mr. Hart, to Shurberg 86,
21 which is a one-page letter dated July 29, 1987, from Ms.
22 Harburg to Mr. Ramirez, transmitting to him a revised
23 ownership report, do you see that?

24 A Yes, sir.

25 Q There is associated with that or following that

1 letter a multi-page draft ownership report, would you agree
2 with that?

3 A Yes.

4 Q Do you recall reviewing this ownership report
5 before Ms. Harburg sent it to Mr. Ramirez?

6 A I don't think I reviewed this one.

7 Q Would you agree that this is a draft which she
8 sent to Mr. Ramirez for his review and ultimately,
9 signature, according to her letter?

10 A Yeah, the letter seems to be a transmittal letter
11 dated July 29.

12 Q Which requests his review for accuracy and then
13 sign and date page one in Exhibit 1 where indicated? She
14 was looking for him to sign this and send it back, was she
15 not?

16 A She requested that he review it and sign it and
17 send it back. That's what the letter says.

18 Q Move along, please, Mr. Hart, to Shurberg 87,
19 which is a telecopier cover sheet, indicating that Ms.
20 Harburg was sending a document to Mr. Bacon on 7/31/87 and
21 the attached document appears to be another revised version
22 of the ownership report, isn't that correct?

23 A That's correct.

24 Q Now, on the upper right hand corner of Shurberg
25 87, page one, there's a handwritten note which reads, "Dale,

1 here are my -- " I believe it's C-O-M-M. "Let have a conf
2 call with Carter and Rich on Monday a.m. Please see me
3 first, THX," and then initials. That's your handwriting?

4 A That's correct.

5 Q What exactly does your note say, if you could read
6 your handwriting and tell us what that means?

7 A It's saying to her, here are my comments on the
8 draft ownership report that she had prepared, along with
9 others. And, I'm giving her some comments on the report.
10 We're coming into the point in time where the document is,
11 you know, in its final preparation and let's have a
12 conference call with Carter Bacon and Rich on Monday morning
13 to discuss it. And, please see me first, meaning, please
14 see me in advance of the call.

15 Q Mr. Hart, just for the record and I don't think
16 this is subject to a whole bunch of dispute, but if there
17 is, we can produce a calendar, I believe a calendar would
18 show in 1987, July 31 was a Friday and August 3 was the
19 following Monday. Do you have any reason to doubt it?

20 A I have no reason to doubt it, but I can't attest
21 to it.

22 Q I understand. Also, if you will --

23 A Well, I said Monday morning.

24 Q If you would refer back to the very first document
25 in the white album, which is Mr. Whitley's memorandum, where

1 he notifies all clients that the ownership was due to be
2 filed on August 3, 1987.

3 A Right, I remember that date.

4 Q So, we're in sync on that. Now, could you go
5 through it and, Mr. Hart, the draft ownership report, which
6 is the attachment in Shurberg 87, and point out to me the
7 changes or your comments that you referenced in your note to
8 Ms. Harburg? Are there any notes on page one?

9 A The comments appear on page four.

10 Q Would that be BH0817 page at the bottom?

11 A Yes.

12 Q That's the two notations of address and address?

13 A That's correct. Apparently, she had not included
14 the address of the two entities, so I pointed that out to
15 her.

16 Then, the next page, it apparently was a typo and
17 I corrected it. And, then, a page later, a few pages later,
18 it looks like I made another grammatical change.

19 Q The were to are?

20 A Yes.

21 Q In the bottom of BH0821, okay.

22 A The very next page, I made some comments that
23 reflected either some information that was incorrect and/or
24 not complete.

25 Q That's with respect to Mr. Boling's address and

1 Mr. Lance's address?

2 A That's correct.

3 Q Also, on the following page, Mr. Richard Gibbs'
4 address and Mr. Randall Gibbs' address?

5 A Correct. Moving onto the remaining pages, there
6 are a few other comments and suggested corrections or
7 questions raised in the matter two pages ahead.

8 Q Those are address questions concerning first Mr.
9 Boling's street address and a question concerning a ZIP code
10 for Mr. Randall Gibbs, is that correct?

11 A That's correct.

12 Q Now, this draft ownership report did not contain
13 any reference, did it, to the December 31, 1985 amended
14 limited partnership agreement? Please feel free to
15 doublecheck me on that, but I haven't been able to find one.

16 A Are you talking about this document SBH87?

17 Q I'm talking about the ownership report, the draft
18 ownership report, which is in SBH87 contains no reference,
19 does it, to the amended Astroline partnership agreement,
20 which was effective as of December 31, 1985?

21 A There are some references to the partnership
22 agreement and amendment letter agreements and other
23 attachments. I don't know if that's what you're talking
24 about or not.

25 Q I'm looking for the one with the executed

1 effective as of 12/31/85?

2 A Twelve 31 --

3 Q Twelve 31 '85.

4 A I see one that's dated 9/10/85.

5 Q Right, but that's not 12/31/85, is it?

6 A No. I'm not sure whether it has a reference in
7 it, I mean, whether that document is referenced here or not.
8 There are a number of articles and amended articles that
9 other documents reference. I'm not seeing yet specifically
10 the one that you're referring to.

11 Q Well, I'm asking you whether you see any, because
12 I'm telling you that I don't see any. But, I want you to
13 confirm that you don't see any, either.

14 A I don't see the reference, if that's what you're
15 talking about. The specific reference to the document that
16 you're asking about, I don't see referenced here. It may --
17 I mean, this was still a working document. This was still a
18 draft, so I'm not sure.

19 Q The draft, as far as you were concerned, needed
20 changing with respect to those matters that you had focused
21 on in your handwritten comments, isn't that correct?

22 A No, we -- you know, I may have had some other
23 input, as well. I think we would have had a subsequent
24 conference call. I met with Dale before the call --
25 probably did. I don't have any exact recollection of it,

1 and probably gave her more input than just these comments
2 that we went through, probably had more input in the
3 document at that final stage than that. But, I don't -- you
4 know, so, my concerns and questions and discussions were not
5 limited to just those things that we went through in the
6 margins.

7 Q But, in your handwritten note on page one, you
8 didn't say, "Here are some of my comments," did you?

9 A No, but I also, you know, indicated that let's
10 have a conference call and discuss it further and then come
11 see me first, even in advance of the call. So, this was
12 still a process that was ongoing.

13 Q And, also, Mr. Hart, on page one of the ownership
14 report form that's page BH0814, down in the lower right hand
15 corner, let me call your attention to paragraph five or
16 question five, which asks what business forum the Respondent
17 is, and there's a question at the bottom of the page which
18 says, "If a limited partnership, is certification statement
19 included as in Instruction 4?" Do you see that?

20 A I see it, yes.

21 Q The answer there has been marked no, do you see
22 that?

23 A I see a check in the no box, yes.

24 Q There are no handwritten notations which suggest
25 that you thought that was inaccurate in any way, are there?

1 A I don't recall whether that was a specific part of
2 my review and discussion or not.

3 Q Well, when you say a specific part of your review,
4 are you suggesting that you were only reviewing parts, but
5 not all, of the draft?

6 A I don't know how comprehensive and thorough a
7 review I was having at that time. I kind of went through
8 it, apparently made some changes and suggestions and then
9 deferred for a subsequent discussion with regard to the
10 matter, both with Dale and two of the other parties
11 involved, the client and the other counsel involved.

12 Q Do you recall having such a discussion with the
13 client and the other counsel involved?

14 A I believe we did have a subsequent conversation.
15 Certainly, I spoke to Dale about this sometime there after,
16 prior to the May filing date.

17 Q So, you spoke with Dale, meaning Dale Harburg, is
18 that correct?

19 A Dale Harburg.

20 Q Did you speak with Mr. Bacon?

21 A I'm not -- I don't have a clear recollection. I
22 probably did, but I'm not exactly sure. Probably, you know,
23 probably did have a call with Ramirez, as well, but it may
24 have been, since, as you recall, it was a weekend, I could
25 possibly have spoken to Ramirez over the weekend by phone,

1 because we were in touch fairly regularly. And, at that
2 time, this apparently was a process that was ongoing and
3 that we were still working on it.

4 I did say let's have a conference call. I'm not
5 sure whether I coordinated that call or whether Dale Harburg
6 did or whether Carter might have initiated a call, I don't
7 recall. But, I guess because of these notes that you're
8 showing me, I would think that there was a follow up
9 discussion.

10 Q Would that have been a single conference call
11 involving you and Mr. Ramirez and Mr. Bacon and possibly
12 others, or individual calls between you and Mr. Ramirez, on
13 the one hand, and you and Mr. Bacon on the other hand, you
14 and others on the third hand?

15 A I'm not sure of the sequence. I know I was in
16 touch with Ms. Harburg at the time and I probably touched
17 base with all of those other people, between the Friday and
18 that Monday.

19 Q Do you recall what issues, if any, you discussed
20 with Mr. Ramirez in connection with the draft ownership
21 report we've just been looking at that apparently was faxed
22 out by Ms. Harburg on 7/31/87?

23 A I know that there were still some things that we
24 were pulling together, some information we were still trying
25 to pull together, some information that we were still trying

1 to gather to complete the process.

2 Q Do you recall what information that was that you
3 were trying to pull together?

4 A Not specifically. I know there were a lot of
5 things going on within the organization, within the company.
6 I remember, as you now, you know, refreshed my recollection,
7 of sending out these questionnaires. And, I'm not sure that
8 we got them all back by then. I know, I have a recollection
9 of the Joel Gibbs' estate people not being very cooperative
10 or responsive during that time. And, it was just a lot
11 going on during that period of time, in terms of the
12 organization structure, ownership, investments.

13 It was -- a lot was going on during that time.

14 Q Now, Mr. Hart, if you'd review, please, the
15 ownership report which is drafted and appears in Shurberg 87
16 and point out to me and to the Court those questions for
17 which information was still being gathered as of July 31,
18 1987?

19 A I mean, I can't point to any specific thing here
20 today, but I'm just saying the ongoing process of gathering
21 the information and pulling it all together was still
22 ongoing at the time. That we hadn't finished the process.
23 We were still trying to figure out how to get the
24 information and put it altogether and the best way to
25 present it, I guess.

1 Q Well, again, Mr. Hart, and I don't want to belabor
2 the point unnecessarily, but you refer to an ongoing process
3 of gathering information. According to your testimony thus
4 far, Ms. Harburg and you had begun the process of gathering
5 information no later than July 7, 1987 and Ms. Harburg had
6 apparently sufficient information at least to commence the
7 drafting process no later than July 20, 1987. And, she had
8 sent out, in fact, on July 29, 1987, a copy which apparently
9 was satisfactory to her, because she suggested to Mr.
10 Ramirez that he review it, sign it and date it.

11 This document was prepared, or was sent out, at
12 least, on July 31, '87 and I'm asking you if you could point
13 me, if you think that this document, as drafted, was
14 incomplete and lacked information which was required to be
15 submitted by the Commission, I would like you to point out
16 to me what portions of the form had not been answered by Ms.
17 Harburg in her draft and needed additional information?

18 A As I said, Mr. Cole, I'm not able to give you any
19 specifics, but my recollection, particularly with regard to
20 Joel Gibbs, who had recently died, and his estate was being
21 reorganized. I see here some information about Joel Gibbs
22 on the last page. It was kind of strange that they would
23 put his citizenship as not applicable, I guess, maybe
24 because he had passed. But, it seems to me, he's still a
25 U.S. citizen, I guess he's a U.S. citizen. I don't know

1 about that, where he was from.

2 You know, the number of votes, if the estate is
3 still handling the matter, then the estate -- I don't know.
4 I just don't know what was still to be done in the process,
5 but they were -- it was still things, as I recall, involving
6 Joel Gibbs and that whole wrap up of his estate, and whether
7 or not there were some other activities involving the
8 organization, meaning Astroline Communications Company LP, a
9 that time, as I recall, the organization was in severe
10 financial straits. They were trying to get additional
11 investors in the deal. Some investors wanted to get out of
12 the deal, and the entire structure and organization was in
13 somewhat of a state of flux. It was a very difficult time
14 for the principal investors that had put up a fairly
15 substantial amount of money, trying to decide what they were
16 going to do with this investment.

17 It had not panned out very well. If I'm not
18 mistaken, around that time, we had also lost the first
19 appeal of the Shurberg case. So, that made a bad situation
20 even worse.

21 And, so, they were just as I'd said earlier, just
22 a lot of things going on internally that made this
23 particular report difficult to complete.

24 Q Mr. Hart, you've been practicing communications
25 law for better than 15 years, almost 20 years at this point.

1 Would you agree with me, sir, that an ownership report is an
2 historical snapshot? That is, it freezes and depicts the
3 ownership and other related matters of the broadcast
4 licensee as of a particular historical moment in time, is
5 that correct?

6 A Yeah, I would think that's correct.

7 Q So, regardless of what might have been in the
8 works for Astroline as of July 31, 1987, isn't it correct
9 that it would have been impossible to prepare a report
10 reflecting Astroline's ownership-related information as of
11 the historical point of, say, July 31, 1987, July 30, 1987,
12 without having to worry about what might happen down the
13 line?

14 A I think it probably could have been done in that
15 fashion. But, let me suggest to you, now that you've given
16 me some documents and flavor for the process that I hadn't
17 really focused on before, that, in the past, we had had to
18 supplement our ownership reports, I think, in two prior
19 occasions and that that supplement routine is not something
20 that I particularly like to do. Having to kind of go back
21 and clarify or correct or supplement a document that really
22 should be accurate and complete, you know, from the very
23 beginning.

24 Earlier, you showed me that we had to do it before
25 and I think, you know, we probably had to do it again. And,

1 because things were in flux and in transition, it was hard
2 to really get a complete handle on the documents, the
3 structure and the organization. And, with Bacon in Boston
4 and us down here in Washington and the organization
5 involving, you know, a fair number of people of which we
6 didn't have a whole lot of contact with, meaning the Gibbs
7 and the Roses and the limited partners. Certainly, Boling
8 and Sostek, we had some contact with. But, some of the
9 other limited partners, we didn't.

10 And, it was just a difficult process to pull
11 together, even to get, as you would say, that snapshot, to
12 take that one instant picture and file it as of that exact
13 day was not something that was, you know, easily done.

14 And, I wasn't that involved in this process. Dale
15 Harburg took the lead, along with Jack Whitley. David
16 Dudley apparently, who I don't really recall being that
17 involved -- he probably was more involved than I was -- and
18 it was an ongoing thing. Carter Bacon, a lot of folks were
19 involved in a lot of discussion, apparently a lot of drafts
20 going around.

21 And, we went down to the last couple of days
22 getting this thing done, even though we had started it, as
23 you observed, and the documents reflect, some months before.
24 So, it wasn't quite as easy as you might now want to
25 characterize it, particularly in light of the fact that this

1 station was about ready to, you know, go belly up, or was
2 certainly in a very bad financial position right now. We
3 had no clear title to the station, couldn't get a loan on
4 it, couldn't get outside investors, even though that process
5 was ongoing. It was just very challenging for everybody.

6 JUDGE FRYSIAK: Mr. Hart, could we put a period to
7 the response?

8 THE WITNESS: Yes, sir, I just wanted to give a
9 flavor to the situation.

10 BY MR. COLE:

11 Q Again, Mr. Hart, assuming for the moment the
12 accuracy of what you just said, that is, that Astroline, for
13 whatever reason, could not get a loan in July of 1987, how
14 did that impede you from preparing an ownership report,
15 advising the Commission of what Astroline's ownership was as
16 of July 30, 1987?

17 A Well, the fact that we couldn't get a loan, that
18 they had to get investments from independent party investors
19 and during that period of time, I believe there were ongoing
20 discussions with potential parties to come in and get into
21 Astroline. I think the bills that you had me look at
22 earlier, that was one of the first times I ever had a chance
23 to look at those bills recently, but I saw that I was
24 involved in discussions with venture capital firms and other
25 outside investors at this time.

1 They would have, they may have wanted warrants or
2 ownership interests in the station at that particular time,
3 and I do believe that these discussions were ongoing right
4 up until the time that we were to be filing an ownership
5 report or some ownership statement. So, it was difficult to
6 be able to pinpoint exactly what the structure was. And,
7 also, again, the Gibbs estate was a matter that I do have
8 some specific recollection of how -- that his untimely death
9 just totally disoriented the whole group.

10 And, at that point, Joel Gibbs' estate refused to
11 put up anymore money. So, when capital calls were made, the
12 other partners had to put up money, whereas Joel's estate
13 did not, and that meant that the percentages had to be
14 reorganized every time somebody made a capital call. And,
15 it should have been reflected here that Rich Ramirez was
16 spending a lot of money in that station. I mean, all the
17 time he was needing more and more capital. It was a real
18 drain on those investors that were on the hook for this
19 thing.

20 JUDGE FRYSIK: Next question.

21 BY MR. COLE:

22 Q When you referred to the untimely death of Mr.
23 Joel Gibbs, I believe you said it was fairly recent prior to
24 July 31, '87?

25 A No, I'm not sure when he died. I remember it to

1 be, you know, an untimely event and the estate was still in
2 the process of being wrapped up after time of July. But,
3 I'm not sure when he passed.

4 MR. COLE: Your Honor, let me provide you, this is
5 not the witness, I don't believe, I'll provide you with a
6 copy and the court reporter with two copies and everybody
7 else with a copy of the document which I would like to have
8 marked as Shurberg Exhibit -- I believe it's 144 or 145 --
9 146, it's 146. This is a one-page document which is an
10 excerpt from the tax returns that Astroline Company, which
11 was, and this appears as -- this is excerpted from the
12 Bankruptcy Exhibit 53 in the Bankruptcy Court and it
13 reflects at the bottom that Joel Gibbs was a partner in
14 Astroline Company who deceased 5/18/86. I'd like to offer
15 that into the record, based on the fact that it was admitted
16 in the bankruptcy proceeding.

17 (The document referred to was
18 marked for identification as
19 Shurberg Exhibit 146.)

20 MR. TOPEL: Your Honor, I have no objection to the
21 offer for the purpose of showing the date of death. The
22 document has other information on it and I don't think that
23 would be meaningful unless the entirety of the report were
24 put in, whether there was a separate K-1 filed for the
25 estate. But, if it's offered just for the date, I have no

1 objection.

2 MR. COLE: Just for the date, Your Honor.

3 JUDGE FRYSIK: You can stipulate to the date
4 without the document.

5 MS. SCHMELTZER: We've already stipulated the
6 date.

7 MR. COLE: I'm sorry, I wasn't aware that we
8 hadn't, in fact, formally stipulated that, in which case, we
9 withdraw 146 as being unnecessary. You can leave it
10 numbered, but I'll withdraw it. The parties are all agreed
11 that Joel Gibbs died on May 18, 1986, that's fine.

12 (The document referred to,
13 having been previously marked
14 for identification as Shurberg
15 Exhibit 146, was withdrawn
16 evidence.)

17 JUDGE FRYSIK: The stipulation is noted.

18 MR. COLE: Thank you, Your Honor.

19 BY MR. COLE:

20 Q Mr. Hart, Astroline did not file an ownership
21 report on August 3, 1987, did it?

22 A Not a form report. It did file a letter that
23 contained much of the same information, but did not file an
24 ownership report form.

25 Q Let me refer you to Shurberg 21, which is in the

1 blue volume. This is a two-page letter and that is your
2 signature on page two, is it not?

3 A Yes, it is.

4 Q It's addressed to the Secretary of the FCC and
5 dated August 3, 1987. Why did you not file an ownership
6 report on August 3, 1987?

7 A We felt that this document was, as you described
8 it, a sufficient snapshot of profiling the ownership
9 structure of Astroline and that we felt that this would be
10 appropriate and proper to file, in lieu of the full
11 ownership form. And, then, we hoped to file a complete
12 ownership report as soon as possible thereafter.

13 Q But, I thought you testified just a couple of
14 minutes ago that you didn't want to have to file something?

15 A I didn't. I didn't want to have to do that, but
16 we just didn't feel that we had our handle on the
17 information sufficient to file the full report on the form
18 and then have to come back and do the whole thing over again
19 or possibly make some errors to be done in that fashion. We
20 collectively decided to file this letter with the
21 Commission. And, if the Commission or you as counsel for
22 Shurberg or anyone else felt that we needed to file
23 something immediately in a more complete fashion, then, you
24 know, you or the Commission could raise an issue with regard
25 to it.

1 Q When you say we collectively, you ware you
2 referring to?

3 A I'm referring to Mr. Shurberg, who was, you know,
4 very much involved in keeping track of --

5 MR. TOPEL: I think you didn't understand.

6 (Multiple voices.)

7 BY MR. COLE:

8 Q You said we elected not to file an ownership
9 report, but instead filed this letter in lieu of ownership
10 reports. Who is we in that sentence?

11 A Oh, okay, fine. I'm speaking of Dale Harburg,
12 Carter Bacon -- my recollection is that Jack Whitley, in
13 particular, played a role in that decision. Carter Bacon,
14 and Mr. Ramirez, of course.

15 Q And, I know I asked you this question once and I
16 don't believe I got a direct answer so let me ask it again.
17 Why, precisely, did you believe that you could not file a
18 full ownership report on August 3, 1986?

19 A Well, there were a number of factors that
20 supported the conclusion that this letter was a better
21 approach to the issue, and those factors related to the
22 internal reorganization of the entity that the composition
23 of the group could change, or was in the process of
24 changing. The death of Joel Gibbs, the insufficient
25 information that we had with regard to him and the fact that

1 the case had been sent back down to the FCC.

2 Q Mr. -- I'm sorry.

3 A We could have filed an ownership report on the
4 form at that time. It was certainly -- the earlier process
5 was that we were going to do it that way. At the last
6 minute, the collective decision was to file the letter. We
7 weren't hiding anything. There was nothing to hide. The
8 ownership is reflected here in the letter. That's accurate.

9 We felt it was a full disclosure and we did plan
10 on completing the actual ownership report form shortly
11 thereafter, or as soon as possible thereafter.

12 Q Mr. Hart, if you have the white album, would you
13 turn to Shurberg 88, which is the draft ownership report
14 which Ms. Harburg sent out on 7/31/87. Have that open,
15 please, and also have open the August 3, '87 letter which
16 you filed with the Commission in lieu of ownership reports.
17 Are you with me?

18 A Yes.

19 Q Now, am I correct in understanding your last
20 response that you believed the August 3 letter provided the
21 Commission with all the information they were seeking in the
22 ownership report form?

23 A It had sufficient information.

24 Q Sufficient information. What do you mean by
25 sufficient information?

1 A You know, all the material information was
2 contained in the letter and that in that it described the
3 equity interests and voting interests and other broadcast
4 interests of the particular parties, both individually and
5 corporate, corporately.

6 I believe that this was a satisfactory response,
7 and we never heard from anyone that said it was
8 unsatisfactory or incomplete when we filed it.

9 Q Did you, in your August 3, 1987 letter, list the
10 contracts and other instruments which were required to be
11 filed by Section 73.3613 of the Commission's rules and
12 regulations?

13 A Contract?

14 Q I'm sorry, refer to page two, to the second page
15 of the Harburg draft ownership report which is, at the
16 bottom, BH0831, Shurberg 88. In the upper left hand corner
17 of that page, which you have to look laterally at that
18 landscape page, paragraph six of the ownership report form
19 says, "List all contracts and other instruments required to
20 be filed with Section 73.3613 of the Commissions rules and
21 regulations." Do you see that?

22 A Yes, sir.

23 Q Did you include a list of all the contracts and
24 other instruments which were required to be filed in your
25 August 3, 1987 letter?

1 A I don't think there were any attachments provided
2 to this. I just think the letter went in as it is, without
3 any attachments at all. Many of those documents had already
4 been filed and others were on record in other places.

5 Q But, if the ownership report form requested a
6 listing of those contracts, irrespective of whether they had
7 been previously filed or filed in other places, wouldn't it
8 have been your understanding of the ownership report form
9 that you would have been required at least to list them in
10 the report?

11 A With regard to the form, if we were doing the
12 form, I think that, you know, we would have done it pursuant
13 to the form. We decided to do the letter and, you know, we
14 felt, again, our ownership experts, Dale Harburg, who had
15 done ownership reports, been working on this thing for a
16 long time, Jack Whitley, who had been like, was even more
17 senior than Dale in the firm, these were the folks that I
18 relied on in the preparation of compiling the information
19 and ultimately preparing this letter and filing it. And,
20 they said it was okay. Carter Bacon felt comfortable with
21 it. The client felt that this was adequate and that we just
22 needed more time to do the actual form, and that's what we
23 did.

24 So, I realize that there were certain things that,
25 you know, were not in this letter that could have been filed

1 for on the form, but we didn't fill out the form. We
2 decided to go with the letter, but we weren't doing it in
3 any way to hide anything or felt that we were doing anything
4 at all improper.

5 Q Why did you include some things but not include
6 other things that were required by the form?

7 A Because the most important part of the form is the
8 ownership structure. What is the ownership structure? Who
9 owns what and who are these people and that's what we did by
10 way of this letter.

11 Q Isn't the ownership structure determined by the
12 organizational documents which govern the partnership?

13 A Well, it's the ownership of the entity as
14 determined by the owners of the entity. I mean, the
15 documents only reflect what this says. The documents don't
16 reflect anything different than what this says. All the
17 documents would do would be to confirm what is already
18 disclosed in the Act.

19 Q So there's no reason not to list the documents?

20 A There's no particular reason not to.

21 Q Then, why didn't you?

22 MR. SESSION: Your Honor, I think Mr. Hart has
23 answered the question sufficiently. He's given a full
24 explanation as to why he regards they filed the letter in
25 lieu of the ownership report.

1 JUDGE FRYSIAK: I agree with that. He said
2 there's no reason why he shouldn't have filed it. That's
3 the way I understand the testimony.

4 BY MR. COLE:

5 Q Mr. Hart, let me just ask one further question.
6 Look on page one of the ownership report form. It's the
7 question I focused your attention on earlier on today,
8 concerning the certification statement included as
9 Instruction 4, excuse me, limited partnership
10 recertification statement included as Instruction 4.
11 Answer, yes, no. Is there any reference in your letter of
12 August 3 which responds in any way to that question?

13 A We just identified who the limited and general
14 partners are in the letter of August 3. We don't really go
15 into any further detail in that August 3 letter.

16 Q Is it not true that had you filed a report, you
17 would have had to provide an answer to that question?

18 A The form calls for a response.

19 Q Is it not also true that as the form had been
20 drafted by Ms. Harburg, at least, the answer to that
21 question was no?

22 A I think you showed me an earlier version where the
23 answer was yes. I saw it scratched out and some other
24 notations reflected in the margin, so I -- the document
25 about which you're asking now has the box checked no. I

1 think an earlier answer was that the box was checked yes.

2 I'm not sure.

3 Again, this was Dale's work product and I'm not
4 able to reconcile those statements.

5 Q What was the correct answer to that question, yes
6 or no?

7 A What is the question, now?

8 Q The question is this. Paragraph five of Ownership
9 Report Form 323, the lower right hand corner, is a limited
10 partnership certification statement included, yes, no?

11 A Is a limited partnership certification statement
12 included? We didn't file the form, so we didn't include the
13 statement.

14 Q So, you didn't have to file, is that what you're
15 saying?

16 A No, I'm just saying I don't even understand your
17 question. We filed a letter, as you know, instead of the
18 form, and so we did not -- I don't -- are you asking me,
19 what is the answer? I don't know what you're asking me.

20 Q My question to you is, what was the answer, as you
21 filed the report, what would the answer have been, the
22 correct answer?

23 A Is certification statement included? I really
24 don't know. I don't know what the answer would have been,
25 because I don't know what the certification statement said.

1 I don't know what -- I haven't even read the instruction
2 through. I haven't done one of these in a while now. And,
3 back then, again, this was not my specific area of
4 expertise. I had done, you know, some ownership reports in
5 the past, but I cannot -- it was a bona fide limited
6 partnership, you know, if that's what you're asking me. Was
7 it a certificate of limited partnership, is that what you're
8 asking? It was a bona fide limited partnership.

9 JUDGE FRYSIAK: There's no question pending, other
10 than the one that he asked.

11 THE WITNESS: I'm not able to answer that, you
12 know, that question.

13 BY MR. COLE:

14 Q Would you agree with me that your August 3, 1987
15 letter did not address that question and did not provide the
16 information requested by the Form 323, paragraph five?

17 A It does say it's a limited partnership and we
18 identified who the limited partners are and what ownership
19 they had. To that extent, it was responsive.

20 Q Mr. Hart, could you please refer to, I believe
21 it's the white album, Shurberg Exhibit 90? That's a copy of
22 an order from the U.S. Court of Appeals for the D.C. Circuit
23 dated June 25, 1987, in case number 84-1600, which is
24 Shurberg Broadcasting v. FCC. Do you see that?

25 A Yes, sir.

1 Q That's a one paragraph order, which is followed by
2 about a one and a half page dissenting statement from Judge
3 Silverman. Is this the order that you're referring to in
4 your August 3 letter?

5 A Yes, sir.

6 Q Could you explain to the Court exactly why it is
7 that this order prevented you from taking a snapshot and
8 providing the FCC with a snapshot of Astroline's ownership
9 as required by the Form 323 ownership report?

10 A I'm not saying that anything prevented us, Mr.
11 Cole, from filing the form. I'm saying that a series of
12 matters and activities and events, including this one,
13 including the decision by the Court which occurs, you know,
14 I guess a little more than a month before the ownership
15 report was due, through a series of things, threw the
16 company in such a massive disarray that we just couldn't --
17 not couldn't, but just chose to file the letter in lieu of
18 the report.

19 But, this order had remanded the case back to the
20 FCC, right, and it called for a competing application. The
21 investors were, you know, alarmed at this decision, and many
22 of them, I guess -- I don't know, many of them were looking
23 to get out, I know that much. Joel Gibbs had died, his
24 estate wasn't putting up anymore money. He was either going
25 to be diluted or ejected out of the partnership, because of